



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Roy Blunt  
United States Senate  
Washington, DC 20510

Dear Senator Blunt:

This letter responds to your letter dated August 01, 2011, to the Commissioner of the IRS. You inquired about the consequences to owners of government-owned buildings of making an allocation of the section 179D deduction to a designer of an energy efficient commercial building property project. Specifically, you asked for clarification "that public sector building owners do not incur any responsibilities, liabilities, or costs by signing the allocation document." Although the owner of a government-owned building may incur responsibilities, liabilities, and costs as result of any agreement that it enters into with a designer of a project, for which the section 179D deduction is allocated, this letter only addresses the federal income tax consequences of making the allocation to a designer.

Generally, a taxpayer who owns or leases a commercial building in the United States can claim a deduction for part or all of the cost of energy efficient commercial building property placed in service after December 31, 2005, and before January 1, 2014. To claim the deduction, the taxpayer must demonstrate that installing this property results in improved energy savings meeting the requirements of section 179D of the Code.

Section 179D(d)(4) creates a special rule for projects involving government-owned buildings for which the deduction is available:

- (4) Allocation of deduction for public property.--In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

The allocation of the section 179D deduction from the owner of a government-owned building to the designer of a project is available only for government-owned buildings. The allocation of this deduction is not available to the designer for commercial buildings that a tax-exempt, non-profit, or any other type of entity owns.

Designers claiming the section 179D deduction must obtain a certification and a written allocation of the deduction from the owner of the government-owned building prior to claiming the deduction. Generally, the designer seeking to claim the deduction pays for this certification. See Notice 2006-52, 2006-1 C.B. 1175.

The maximum amount of the section 179D deduction that an owner can allocate to the designer is the amount of the costs the owner of the government-owned building incurred to place the energy efficient commercial building property in service. The designer does not include any amount in income and has no requirement to reduce future deductions as a result of the allocated section 179D deduction. See Notice 2008-40 (the Notice), 2008-14 I.R.B. 725.

The owner of a government-owned building must include certain information in the written allocation provided to a designer (see section 3.04 of the Notice):

- (1) The name, address, and telephone number of an authorized representative of the owner of the government-owned building
- (2) The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the section 179D deduction
- (3) The address of the government-owned building on or in which the property is installed
- (4) The cost of the property
- (5) The date the property is placed in service
- (6) The amount of the section 179D deduction allocated to the designer
- (7) The signatures of the authorized representatives of both the owner of the government-owned building and the designer or the designer's authorized representative
- (8) A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the government-owned building, in the following form:

"Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete."

Under section 7206 of the Code, the IRS may impose a penalty on any person who provides a fraudulent or false statement.

The owner of the public building has no requirement to include any amount in income on account of the section 179D deduction allocated to the designer. The owner of the public building, however, must reduce its basis in the energy efficient commercial building property by the amount of the allocated section 179D deduction. See section 3.07 of the Notice.

I hope this information is helpful. We would be happy to discuss the allocation requirements for this deduction with you or your staff. Please call  
at if you would like to schedule a meeting.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)